

ORIGINAL

Decision No. 41023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SCOTT LUMBER COMPANY, INC.,
Complainant,

vs

Case No. 4263

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, THE WESTERN PACIFIC RAILROAD
COMPANY, THE GREAT NORTHERN RAILWAY
COMPANY, SOUTHERN PACIFIC COMPANY, ET AL.
Defendants.

A. LARSSON, BEROL & HANDLER by EDWARD M. BEROL and
WARREN P. MARSDEN, for complainant.
JOHN E. HENNESSY, J. E. LYONS, R. E. BRANDT,
J. C. ORLOWSKI and JOHN H. DESCH, for
defendants.
ROBERT C. NEILL, for California Fruit Growers Exchange
and Fruit Growers Supply Company, interested
parties.

O P I N I O N

Complainant, a corporation, operates a lumber mill situated about 1 1/2 miles west of Burney in Shasta County, from which it ships lumber and other forest products to various destinations in California and other states. The nearest rail shipping facility is at Pondosa on the line of the McCloud River Railroad Company. (1) The defendants are various railroads and one highway common carrier.

By complaint, as amended, it is alleged that (a) the failure and refusal of defendants to establish through routes and joint truck-rail rates on lumber and other forest products from complainant's mill, and rail proportional rates on the same articles

(1) Other rail shipping points available to complainant include Bieber and Redding, located on the lines of The Western Pacific Railroad Company and Southern Pacific Company, respectively.

from Pondosa, Bieber and Redding, to all destinations in California, and (b) the failure and refusal of the rail-line defendants other than McCloud River Railroad Company to advance trucking charges on complainant's shipments, subject it to prejudice and disadvantage in violation of Section 19 of the Public Utilities Act, and result in rates and charges which are "unjust, unreasonable and excessive, and in violation of Section 33" of the same Act. An order is sought directing defendants to establish through routes, joint truck-rail rates and rail proportional rates, as well as to advance common carrier truck charges on all joint truck-and-rail shipments from complainant's mill to all points in California. The defendants in their answers deny the essential allegations of the complaint. Hearings were held before Examiner Bradshaw at San Francisco. Briefs have been filed.

The rates on lumber and other forest products to most destinations in California are the same from all rail shipping points in the northern part of the State, and from certain parts of southern Oregon. From this extensive producing area to the San Francisco Bay and Los Angeles Districts the rail rates are 23 and 37 cents, respectively. ⁽²⁾ The transportation charges from complainant's mill, which is located about 28 miles from Pondosa, exceed those from mills having rail facilities by 8½ cents per 100 pounds, a rate of this amount being published from Burney to Pondosa by the Burney Transportation Company, a highway common carrier. It was testified that the additional transportation cost is the equivalent of about \$2.50 per 1,000 board feet and represents from 3 to 5 per

(2) Unless otherwise indicated, rates and charges are stated herein in amounts per 100 pounds and do not include the general increases established effective January 1, 1947, pursuant to Decision No. 39785 in Application No. 27446.

cent of the sales price of lumber. Complainant's vice president and general manager stated that complainant produces approximately 41,000,000 board feet per year and that from about 33 to 40 per cent of its output is shipped to California destinations.

Testimony concerning the conditions controlling the sale of lumber in California was presented through complainant's vice president and general manager, its sales manager and two brokers engaged in the purchase and sale of lumber, one being located in southern and the other in northern California. According to these witnesses, while prices were relatively unimportant during the last few years due to the scarcity of supplies, a marked change in the situation is rapidly taking place. They said that marketing conditions are becoming such that complainant will be unable to sell its lumber in California at a higher delivered price than offered by the mills located upon rail lines in the same general producing area. It was asserted that in order to do business it will be necessary for complainant to absorb the cost of transporting its lumber from the mill to rail facilities. Both the vice president-general manager and the sales manager testified that to be required to do so under competitive conditions might cause complainant to operate at a loss. It is claimed that this was the situation prior to the war. Complainant, therefore, desires to be placed on a parity from a rate standpoint with the mills located at points having rail facilities.

Complainant's rate witness directed attention to the existence of joint truck-rail rates on lumber and other forest products from Fort Jones, Etna and Callahan to several important destinations. These shipping points are located west of Yreka and

(3) These rates apply to San Francisco, Oakland, Alameda, Sacramento, Mendota, Los Angeles, South Los Angeles, Wilmington, Los Angeles Harbor and Long Beach.

(4)

are served by the highway division of Yreka Western Railroad Company. It was testified that lumber mills with which complainant is in competition are located at each of these points. The rates apply via truck to Yreka and rail beyond. In addition to the Yreka Western, the Southern Pacific Company, Pacific Electric Railway Company and Union Pacific Railroad Company are parties to this through route and joint rate arrangement.

The constructive highway distances from these shipping points and Burney to the nearest rail heads, the through rates to San Francisco and Los Angeles and the local truck and rail rates to and from the rail heads are set forth in the following tabulation:

	: : Constructive : Highway Miles : to Rail Head :	: : Through : Rate :	: : Rail Head to : Destination :	: : Point vs. : Rail Head :	: : Difference: : Rate from : Shipping : Truck Rate : to Rail Head:	: :
	(cents)	(cents)	(cents)	(cents)	(cents)	

To San Francisco

From

Fort Jones	28	28½	23	5½	6½(a)
Etna	47	30	23	7	8½(a)
Callahan	57	31	23	8	9½(a)
Burney	37	31½(d)	23	8½(d)	8½

To Los Angeles

From

Fort Jones	28	38½(b)	37	1½	6½(a)
Etna	47	40 (b)	37	3	8½(a)
		44 (c)	37	7	8½(a)
Callahan	57	41 (b)	37	4	9½(a)
		45 (c)	37	8	9½(a)
Burney	37	45½(d)	37	8½(d)	8½

(a) Local rate to Yreka is 1 cent higher from November 1st to March 1st of each year.

(b) Minimum weight 40,000 pounds.

(c) " " 30,000 " .

(d) The rates shown from Burney do not include the cost of loading lumber into rail cars at Pondosa. Complainant estimates this cost to be approximately \$1 per 1,000 board feet.

(4) The Yreka Western Railroad Company is not a party to this proceeding.

Although Southern Pacific Company and some of the other defendants are also parties to certain joint truck-rail rates on lumber from shipping points on the Mendocino coast, the testimony indicates that it is not the general practice of either the Southern Pacific or Western Pacific to establish joint rates with truck lines on traffic from or to off-rail points. They claim that if they did so on lumber it would be necessary to establish similar rates on agricultural and mineral products. It was stated that this practice would necessitate allowing truck lines divisions and require the rail lines to assume a portion of the cost of transferring lading between trucks and rail cars at interchange points. The Western Pacific is not a party to any joint truck-rail rates. It was explained that the joint rates from the mills west of Yreka were established (1) to assist the Yreka Western in retaining needed traffic and (2) to meet truck competition.

A witness for defendants testified that lumber is shipped to California markets in substantial volume from various mills in Del Norte and Trinity Counties and southern Oregon which are not located at points served by rail. He declared that the full combination of truck and rail rates to and from the rail head is charged in the instances referred to and in some cases the mills are situated a greater distance from rail facilities than that operated by complainant.

Proportional rail rates are sought from Pondosa, Bieber and Redding to all destinations, Chico and south, to which the local rail rates are grouped from different mills having rail facilities. Apparently, they are desired so that lumber can be trucked to the rail heads and move by rail beyond when a joint highway common

carrier-rail service may not be available at a through transportation charge no higher than in effect from the mills served by rail. It was testified that, if proportional rates were established, Bieber and Redding would be utilized at times as shipping points instead of Pondosa, principally during the winter months.

The rate witness employed by complainant cited instances in which certain defendants have established proportional rates on lumber. Rates of this nature were published on (a) rough lumber from Pondosa to Croville and Chico when reaching Pondosa over public highways from points beyond; (b) rough sawn lumber from Bieber to Chico when originating at Adin, California; (c) rough cedar planks and slabs from Redding to Oakland and San Leandro when moved into Redding from a lumber mill located approximately 33 miles northeast thereof; (d) lumber and certain forest products between a number of points in central California served by the Western Pacific or affiliated lines when originating at points on the lines of other rail carriers; and (e) lumber, posts, timbers and similar articles from the Los Angeles area to Beaumont and certain points east thereof when moving to off-rail points beyond.

The volume of some of these rates were contrasted with the local rates on lumber from and to the same points. For instance, inasmuch as the proportional rate on rough cedar planks and slabs from Redding to Oakland and San Leandro, as modified by the general increases which became effective January 1, 1947, amounted to 6 cents less than the local rate, complainant's witness stated that a proportional rate 8½ cents lower than the local rate should be established from Redding to the San Francisco Bay area on lumber

(5)
originating at Burney.

Witnesses for defendants testified that the proportional rates instanced by complainant were established to meet one form of competition or another. It was asserted that rough lumber had been moving from the Burney District to Bieber, thence via the Western Pacific to Oroville and Sacramento; that the truck rate was the same to both Bieber and Pondosa; and that in order to meet the through rate via Bieber without reducing the local rate from Pondosa a proportional rate was established from Pondosa to Oroville. The proportional rate from Pondosa to Chico was assertedly established to prevent the movement of a substantial quantity of lumber from the Burney District by shipper-owned trucks. It was stated that the rates on traffic originating at Adin and on rough cedar planks and slabs from Redding were published for the same purpose. Most of the proportional rates of the Western Pacific and affiliated lines in central California are claimed to have been published to compete for traffic where the publication of joint rail rates could not be arranged. The rates from the Los Angeles area were said to have been designed to permit the movement of shipments by rail, thence by truck to sites of work on the Colorado River aqueduct in competition with direct truck movements. It was stated that, there being no further movement of traffic thereunder, the proportional rates from the Los Angeles area were being cancelled. The testimony also indicates that the rate on cedar planks and slabs from Redding and a few of the other proportional rates have already been cancelled.

(5) Complainant's mill is located within 20 miles of the mill of the lumber company on whose traffic the proportional rate on rough cedar planks and slabs applied.

In addition to the establishment of proportional rates, complainant desires that the rail-line defendants be required to advance truck charges at Pondosa, Redding and Bieber on lumber originating in the Burney District, a practice which McCloud River Railroad Company permits when shipments move to Pondosa under the published rate of the Burney Transportation Company. Although not definitely established of record, it appears that the reason for the advancing of trucking charges, from complainant's standpoint, is that any commissions paid to brokers are predicated upon an invoice price which includes the cost of transportation to the rail head, unless trucking charges appear as advances upon the freight bill issued at destination. In instances where trucking charges are advanced, the lumber company, therefore, makes some saving in the amount of commissions paid to brokers. It is also relieved of providing funds for the payment of trucking charges.

The record shows that the rail-line defendants other than McCloud River Railroad Company do not advance trucking charges for movements from places outside the switching or corporate limits of the points where freight is tendered. They claim that to do so with respect to highway common carriers would lead to the extension of the practice to all highway carriers, thereby increasing accounting expense and financial risks without any compensating benefits.

The defendants, however, advance charges to connecting rail lines, water carriers, shippers and warehousemen when directly incidental to the transportation of freight. In certain instances similar advances are made to freight forwarders. A satisfactory guarantee that refunds will be made in the event of the carriers' inability to effect collection at destination is required.

It is asserted that most of the advancing of charges by the rail lines is upon a reciprocal basis, which would not be the case if trucking charges were advanced on lumber shipments originating in the Burney District. As hereinbefore stated, instances were cited where lumber mills from other off-rail points in northern California and southern Oregon pay the full combination rates to and from the rail head. According to a witness for defendants, trucking charges are not advanced by the rail carrier in such cases.

Complainant urges that the publication of joint through truck-rail rates for the benefit of competing lumber mills and the refusal to accord similar rates to it constitutes the granting of a preference or advantage and subjects complainant to prejudice or disadvantage in violation of Section 19 of the Public Utilities Act. It contends that the preference and prejudice created by the maintenance of joint truck-rail rates from Fort Jones, Callahan and Etna and the absence of joint rates from Burney results in unjust, unreasonable and excessive rates within the meaning of Section 33 of the same Act. The argument is also advanced that, by reason of the preference and prejudice and the consequent unjust, unreasonable and excessive nature of the rates from Burney, no satisfactory through route or joint rate exists from that point and public convenience and necessity demand the establishment of through routes and joint rates. In support of its position, in urging the entry of an order pursuant to Section 33, complainant cites Sierra Oil Co. v. Southern Pac. Co., 32 C.R.C. 617, Blythe Chamber of Commerce v. Calif. Southern Ry., 19 C.R.C. 681, and Pac. Portland Cement Co. v. Tidewater So. Ry. Co., 14 C.R.C. 359, in which joint rail rates were required in order to remove undue preference and prejudice or where combination rates were found to be unreasonable, or both.

It is contended that by the publication of proportional rates in the instances of record competitors are granted benefits which are withheld from complainant. The factual situation in the instant case is alleged to be very similar to the facts of record in several cases in which, complainant states, the Interstate Commerce Commission directed the establishment of proportional rates. The cited cases are Swift Lbr. Co. v. F. & G. R.R. Co., 61 I.C.C. 485, Smitherman and McDonald v. Mansfield Hardwood Lbr. Co., 142 I.C.C. 49, and Dawkins Lbr. Co. v. Chesapeake & O. Ry. Co., 129 I.C.C. 415. The first two of the cases mentioned did not involve proportional rates. While undue prejudice was an issue in each of the proceedings, they did not embrace considerations, such as now before us, which concern the propriety of prescribing proportional rail rates on ex-truck traffic.

The practice of the rail-line defendants other than McCloud River Railroad Company in advancing the charges of short-line railroads, vessel carriers and certain other parties, while refusing to advance trucking charges on movements from beyond the corporate or switching limits of the point at which freight is tendered to the rail carrier, is said to be a preference or advantage within the meaning of Section 19. Complainant's view in this regard is that highway carriers, and shippers utilizing their facilities, are subjected to prejudice and disadvantage.

Defendants contend that where joint truck-rail rates are published, they were established to meet a condition entirely different from that prevailing in the movement of lumber from Burney. The fact that the truck line serving Fort Jones, Etna and Callahan is operated by a railroad rather than an independent

highway carrier, such as Burney Transportation Company, they claim, operates to place the movement of traffic from those points under dissimilar circumstances and conditions than those connected with the movement of lumber from Burney. It is urged that complainant's difficulties are due to the location of its mill instead of any unlawfulness in defendants' rates and that the record is devoid of any showing that public convenience and necessity require joint truck-rail rates from the Burney District.

With respect to the publication of proportional rates on lumber, defendants rely on the claim that unusual conditions not present in connection with the movement of lumber from Burney justify their action in maintaining rates of this nature in certain instances and refusing to establish similar rates on complainant's traffic. Consequently, it is asserted that the difference in treatment is not undue or otherwise unlawful.

Complainant having conceded that removal of the alleged discrimination as to advancing of charges by any means other than the extension of the practice to the trucking charges they pay would not satisfy the complaint, defendants contend that the allegations with respect thereto have been abandoned. They argue that undue prejudice or discrimination cannot exist unless the resulting injury will cease upon removal of the prejudice, regardless of the manner of its removal, citing Royal Crystal Salt Co. v. American Transp'n. Co., 227 I.C.C. 9, 15.

It is well established that to be unlawful under Section 19 of the Act the preference or prejudice complained of must be unjust and undue. Re Tariff Suspensions, 36 C.R.C. 135, 137. To be undue, preference and prejudice must be shown to be a source

of advantage to the parties or traffic alleged to be favored and a detriment to the other parties or traffic. Blackington & Son

Canning Co. v. Alton R. Co., 259 I.C.C. 584, 591; Kohler Co. v. Alton & S.R. Co., 263 I.C.C. 667, 673.

So far as defendants' practice in establishing proportional rail rates on ex-truck traffic is concerned, the record does not disclose that such action has been detrimental to complainant or its traffic. As indicated herein, rates of this nature were published to meet specific situations and have been confined to a limited number of points of origin and destination. To the extent that they were established from Pondsosa, the rates have been available to complainant as well as to others having lumber mills in the Burney District.

There has, likewise, been no showing that the advancing of charges to short-line railroads, water carriers and others, while refusing to do so for highway carriers with certain exceptions, has resulted in any disadvantage to complainant.

As hereinabove stated, the record discloses that the lumber companies with which complainant encounters competition include those operating mills at Fort Jones, Etna and Callahan. The fact that these points are served by a railroad-owned highway carrier and the Burney District by an independent highway carrier does not justify the difference in treatment of maintaining joint rates in one instance and refusing to do so in the other. The practice of certain of the defendants in maintaining the joint truck-rail rates in question, while failing or refusing to participate in joint rates from the Burney District to the same destinations, must, therefore, be regarded as a preference or

advantage such as prohibited by Section 19 of the Act. In our opinion, joint rates from the Burney District should not exceed those contemporaneously published from Etna and should apply via Ponderosa or Redding as rail heads.

While reaching these conclusions upon the issue of preference and prejudice, it does not appear that the entry of an order pursuant to Section 33 of the Act, directing the establishment of through routes and joint truck-rail rates, is justified by the showing presented. The evidence fails to support the requisite findings upon which such an order must be based. In certain instances, joint all-rail rates have been prescribed for the purpose, among other things, of removing undue prejudice and discrimination. The cases cited by complainant, however, are readily distinguishable from the situation now under consideration. In the cases to which attention is called, rates of the nature which usually applied, namely, joint all-rail rates, constituted the source of the preference. Public convenience and necessity required that such rates be extended to the points and traffic found to be prejudiced. In the instant case, the preference arises from a departure from the usual rate-making practice with respect to traffic originating at off-rail locations. Our order will, therefore, be limited to requiring the removal of the preference and advantage found to exist.

Upon careful consideration of all of the facts and circumstances of record in this proceeding, the Commission is of the opinion and finds:

1. That defendants' failure and refusal to publish rail proportional rates for the transportation of lumber and other forest

products originating at complainant's mill near Burney from Pondosa, Redding or Bieber to destinations in California, and their failure and refusal to advance trucking charges on complainant's shipments, have not been shown to have subjected, or to subject, complainant to prejudice or disadvantage in violation of Section 19 of the Public Utilities Act or to result in unjust, unreasonable or excessive rates or charges.

2. That the practice of defendants, Southern Pacific Company, Pacific Electric Railway Company and Union Pacific Railroad Company, in publishing and maintaining joint through rates for the transportation of lumber and other forest products from Fort Jones, Etna and Callahan to destinations in California south of Montague, and refusing to publish and maintain joint through rates for the transportation of the same commodities from complainant's mill near Burney via Pondosa or Redding to the same destinations, results in preference or advantage and prejudice or disadvantage in violation of Section 19 of the Public Utilities Act.

3. That public convenience and necessity has not been shown to demand the establishment of a through route and joint rates for the transportation of lumber and other forest products from complainant's mill near Burney to destinations in California.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and based upon the conclusions and findings set forth in the preceding opinion, which said opinion is hereby made a part hereof,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company, Pacific Electric Railway Company and Union Pacific Railroad Company, according as they participate in the transportation, be and they are hereby ordered and directed, on or before 60 days from the effective date of this order, to publish, file and make effective tariffs removing the preference and advantage found to exist.

IT IS HEREBY FURTHER ORDERED that, except as provided in the preceding ordering paragraph, the complaint, as amended, in this proceeding be and it is hereby dismissed.

This order shall become effective 20 days from the date hereof.

Dated at San Francisco, California, this 17th day of December, 1947.

Harold P. Gule
Justin F. Cooney
Earl A. Powell
R. E. Johnson

COMMISSIONERS